**UNITED STATES DISTRICT COURT
IN THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

Joanne Sanchez,	§	
Plaintiff,	§	
	§	
v.	§	C.A. No. 04–CV–533
	§	
Texas Department of Aging &	§	
Disability Services, et. al.,	§	
Defendants.	§	

MEMORANDUM OPINION AND ORDER DENYING MOTION FOR LEAVE TO AMEND

Pending before the Court is defendants' Motion for Leave to File Amended Answer. (D.E. 29). Plaintiff timely objected to this motion. (D.E. 33). For the following reasons, defendants' motion for leave is DENIED.

"Although leave to amend pleadings "shall be freely given when justice so requires," FED.R.CIV.P. 15(a), leave to amend is not automatic." *Avatar Exploration, Inc. v. Chevron, U.S.A., Inc*., 933 F.2d 314, 320 (5th Cir. 1991). Where a motion for leave to amend pleadings is untimely or futile, denial is proper. *Id.* at 320–321.

Defendants seek leave to make similar plea to the jurisdiction arguments that this Court has already addressed. Defendants wish to argue that the 5th Circuit wrongly decided *Meyers ex rel. Benzing v. Texas*, 410 F.3d 236 (5th Cir. 2005) (holding that in light of the Supreme Court's decision in *Lapides v. Board of Regents of University System of Georgia*, 535 U.S. 613 (2002), a state waives its immunity from suit in federal court when it removes

a case involving state-law and/or federal-law claims from state court to federal district court).

The 5th Circuit recently denied a petition for rehearing en banc in this case. 454 F.3d 503

(5th Cir. 2006). In light of the clearly established law of *Meyers* and *Lapides*, defendants'

plea to the jurisdiction must fail. Amending pleadings for this purpose is futile.

Additionally, the Court's scheduling order for this case required amended pleadings

to be filed by December 29, 2005. (D.E. 20). Amending pleadings at this late juncture in the

adjudication of this case would be untimely.

WHEREFORE, because it is untimely and futile, Defendants' Motion for Leave to

Amend (D.E. 29) is DENIED.

Ordered this   9   day of October , 2006.

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HAYDEN HEAD
CHIEF JUDGE